

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

Stanley Odell Moss,

Debtor(s).

C/A No. 21-00016-HB

Chapter 13

ORDER

THIS MATTER came before the Court for a hearing on February 23, 2021, to consider the Motion for Relief from Stay filed by Creditor U.S. Bank, National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust pursuant to 11 U.S.C. § 362(d)(1), (2) and (4).¹ Debtor Stanley Odell Moss objected, *pro se*.² At the request of the parties, the hearing was conducted by telephone conference. In addition to the hearing record, the Court considered various pleadings filed on the docket in this and prior bankruptcy cases filed by Moss.

Creditor asserts its rights under a note, mortgage, and associated documents that relate to Moss' residence located at 603 Greenleaf Drive, Anderson, South Carolina, 29626, and valued by Creditor in its Motion at \$99,056.00. The Motion asserts relief from the automatic stay should be granted under § 362(d)(1) and (2) and that *in rem* relief should also be granted pursuant to § 362(d)(4). In support, Creditor asserts: payments on the loan are due as of November 1, 2018; the Creditor has not been provided adequate protection for its interest in the property; there is no equity in the property; and it is not necessary for a successful reorganization. Further, Moss had two bankruptcy cases pending within the year before this case was filed. On February 19, 2020, Moss filed a Chapter 13 petition, *pro se*, bearing Case No. 20-00865-hb. That case was dismissed on May 18, 2020, because Moss failed to pay the filing fee installment, file copies of payment advices, and attend the meeting of creditors. On August 4, 2020, Moss filed another Chapter 13 petition,

¹ ECF No. 16, filed Jan. 19, 2021.

² ECF No. 21, filed Feb. 4, 2021.

pro se, bearing Case No. 20-03140-hb. That case was dismissed on November 9, 2020, because Moss failed to attend the meeting of creditors. In addition to the fact that this is the third case filed by Moss within a year, the record includes various pleadings from the state court foreclosure proceedings that include Moss' challenges to the state court's jurisdiction and Creditor's right to foreclose. The bankruptcy filings halted Creditor's progress in those proceedings.

While details were limited, Moss explained without challenge that he experienced illness, job loss, and adversity from the COVID-19 pandemic, which contributed to his failure to successfully pursue prior cases. Although he checked the box on his bankruptcy schedules indicating the Creditor's claim is "disputed," Moss explained that he wants to pay the debt through his Chapter 13 plan, or any loss mitigation options otherwise available to him. Moss recently participated in the meeting of creditors and a confirmation hearing is scheduled for April 8, 2021. He has provided proof that he is currently receiving unemployment compensation and searching for a new job.

Section 362(c)(4)(A)(i) of the Bankruptcy Code provides if a debtor had two or more bankruptcy cases pending within the previous year that were dismissed, then the automatic stay shall not go into effect upon filing of the next case. "[O]n the request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect[.]" 11 U.S.C. § 362(c)(4)(A)(ii). The debtor may request the stay take effect in the case only if such request is made within 30 days after the filing of the later case and if, after notice and a hearing, the debtor "demonstrates that the filing of the later case is in good faith . . ." 11 U.S.C. § 362(c)(4)(B). No timely request that the Court order the stay take effect pursuant to § 362(c)(4)(B) was filed here, and the Court must order that no stay is in effect. Therefore, Creditor's request to lift the automatic stay pursuant to § 362(d)(1) and (2) is not necessary because the protections of § 362(a) do not

apply in this case. In other words, there is no bankruptcy stay in place and the Court confirms that Creditor already possesses that portion of its requested relief.

Addressing Creditor's additional grounds for relief, § 362(d)(4) allows *in rem* relief in appropriate circumstances. If granted, relief under § 362(d)(4) applies to the subject property in subsequent cases filed by the debtor. It provides, in relevant part:

with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved . . . multiple bankruptcy filings affecting such real property

an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court . . .

11 U.S.C. § 362(d)(4)(B). “A ‘scheme,’ for purposes of § 362(d)(4), ‘is an intentional artful plot or plan to delay, hinder [or] defraud creditors.’” *In re Ford*, 522 B.R. 829, 840 (Bankr. D.S.C. 2014) (quoting *In re Wilke*, 429 B.R. 916, 922 (Bankr. N.D. Ill. 2010)). In determining whether a debtor acted in bad faith to warrant *in rem* relief, the Court also considers: “1) strategic filing of bankruptcy petitions to prevent collection; 2) multiple petitions by multiple parties to protect common property; 3) lack of evidence of changed circumstances between filings; and 4) inability to fund a plan.” *In re Henderson*, 395 B.R. 893, 901 (Bankr. D.S.C. 2008). The creditor bears the initial burden of showing cause for relief from the stay exists under § 362(d)(4). Upon such a showing, the burden shifts to the debtor to demonstrate the filing of the petition was not part of a scheme to delay, hinder, or defraud the creditor. 11 U.S.C. § 362(g); *Henderson*, 395 B.R. at 898.

Creditor provided some support for its requested *in rem* relief with the records of Moss' prior bankruptcies and the foreclosure proceedings. Moss offered information and arguments regarding his prior unproductive filings and ability to proceed in this case, which were not contradicted by Creditor. Given the burden of proof, and after a careful review, the evidentiary

record presented by Creditor is inconclusive to find Creditor established a prima facie basis for its contention that Moss' multiple filings were part of a scheme to delay, hinder, or defraud creditors. Therefore, Creditor has failed to show that relief under § 362(d)(4) is appropriate.

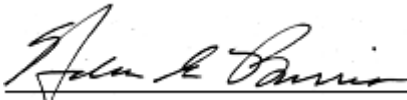
IT IS, THEREFORE, ORDERED THAT:

- 1) pursuant to 11 U.S.C. § 362(c)(4), no automatic stay is in effect and the protections afforded by § 362(a) do not apply;
- 2) consideration of additional relief pursuant to § 362(d)(1) and (2) is, therefore, not necessary; and
- 3) any further relief requested pursuant to § 362(d)(4) is denied.

**FILED BY THE COURT
02/24/2021**



Entered: 02/24/2021


Chief US Bankruptcy Judge
District of South Carolina